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☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 165.00

Complete if Known

Application Number 10/020,342
Filing Date December 12, 2001
First Named Inventor FRIESEN, Garry D.
Examiner Name Keenan, James W.
Art Unit 3652
Attorney Docket No. P05453US00

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1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
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2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims -20** = X =
Independent Claims -3** = X =
Multiple Dependent =

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
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FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

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1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	165.00
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
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SUBTOTAL (3) (\$) 165.00

SUBMITTED BY

Name (Print/Type) VINCENT S. EGOLF
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Registration No. 51,131
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Telephone 515-288-3667
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE: FRIESEN, GARRY D.)
)
) APPEAL NO. _____
SERIAL NO: 10/020,342)
)
FOR: IMPROVED TRAILER FOR)
TRANSPORTING BULK SEED BOXES) BRIEF ON APPEAL
)
FILED: December 12, 2001)
)
GROUP ART UNIT: 3652)

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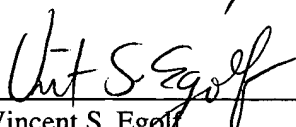
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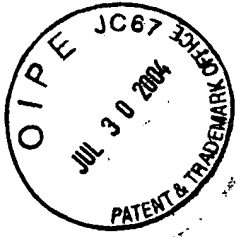
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APPENDIX

Claims on Appeal



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I. INTRODUCTION

This is an appeal of the Final Rejection dated December 1, 2003, finally rejecting claims 1-10, 12-15, 17-19 and 26-28. The Applicant filed an Amendment After Final on December 29, 2003 amending claim 1 to include the limitations of claim 26. In an Office Action dated January 21, 2004, the Examiner entered the proposed amendments in the Applicant's Amendment After Final. The appealed claims 1-10, 12-15, 17-19, 27 and 28 are set forth in an attached Appendix.

II. REAL PARTY OF INTEREST

This application has been assigned to Friesen USA, Inc., an Iowa corporation, having an address of 2897 Expansion Blvd., Storm Lake, Iowa 50588. The assignment was recorded at reel 01478, frame 0970 on June 18, 2004.

III. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences at this time.

IV. STATUS OF CLAIMS

Claims 1-10, 12-15, 17-19, 27-28 are pending and appealed. No other claims are currently pending.

V. STATUS OF AMENDMENTS

All amendments have been entered. A Notice of Appeal was timely filed on June 1, 2004.

VI. SUMMARY OF INVENTION

The present invention is directed towards an improved trailer 10 for transporting bulk seed boxes. (Specification, page 3, lines 31-33; Figure 1).

Typically, in the prior art, a trailer is used to transport bulk seed boxes and bags and is loaded using a forklift which uses a two-step process. First, the forklift lifts and sets the bulk seed box upon the flat trailer bed, and secondly, the forklift pushes the box to get the box fully and squarely on the flat trailer bed. This two-step process is slow and time consuming and could potentially damage the box with the forks of the lift. (Specification, Background of the Invention, paragraph 1).

The present invention overcomes the problems associated with the prior art by including guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed. (Specification, page 4, lines 15-19). The guide plates 22 function to align or center the seed box 18 onto the bed 14 as the box is loaded by a forklift truck and form a self-centering mechanism for quick and easy loading of the box 18 onto the trailer bed 14 in a single step. (Specification, page 4, lines 26-30). Once the box 18 is lowered by the forklift truck onto the bed 14, the box is automatically centered on the bed

without the need to adjust the position of the box by pushing with the lift forks.

(Specification, page 4, lines 30-33; page 5, lines 1-2).

The trailer 10 also includes a locking system for securing the seed box 18 to the bed 14. (Specification, page 5, lines 3-4). The lock system is associated with the guide plates 22 and a flange extending along the sidewalls adjacent the bottom of the box. (Specification, page 5, lines 4-5; Figures 2 and 3). The lock system includes lock bars on the trailer bed that engage the flange on the lower edge of seed box to secure the seed box to the bed. Each lock bar 24 is connected to the bed 14 by a hinge 26 permitting pivotal movement between an unlocked position spaced outwardly from the perimeter edge of the bed and a locked position spaced inwardly from the perimeter edge of the bed. (Specification, page 5, lines 5-16).

VII. ISSUES

The issues on appeal are:

A. Whether claim 1 is obvious under 35 U.S.C. § 103(a) over U.S. Patent 6,092,974 to Roth in view of U.S. Patent 1,675,701 to Fitch, and over U.S. Patent 5,465,829 to Kruse in view of U. S. Patent 1,675,701 to Fitch.

B. Whether claim 10 is obvious under 35 U.S.C. § 103(a) over U.S. Patent 6,425,728 to Ehlers in view of U.S. Patent 3,868,083 to Titcombe.

VIII. GROUPING OF THE CLAIMS

Applicant relies for separate patentability on claims 1 and 10. Claims 2-9 and 27-28 rise or fall with claim 1 and claims 12-15 and 17-19 rise or fall with claim 10.

IX. ARGUMENT

A. Claim 1 Is Not Rendered Obvious Over Roth in View Fitch or Kruse in View of Fitch.

Claim 1 was rejected under 35 U.S.C. § 103(a), as being unpatentable over Roth in view of Fitch and Kruse in view of Fitch.

Claim 1 is directed towards an improved trailer for transporting a bulk seed box, and requires guide plates inclining "upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed." This limitation is not met by the cited references.

The Examiner acknowledges in paragraph 2 of the Final Office Action that neither Roth or Kruse show guide plates which incline outwardly from the bed. The Examiner cites the Fitch patent for guide plates which allegedly incline upwardly and outwardly from the bed. However, the Fitch corner brackets 21, 22 do not extend outwardly from the perimeter edge of the bed, as required by claim 1. Rather, the Fitch brackets 21, 22 are positioned entirely within the perimeter of the bed. The Examiner further admits in the Final Office Action that even as modified, the guide plates do not have an upper edge which extends beyond the bed perimeters, but suggests that such a structure would be a "design expediency".

However, "design expediency" is an improper basis for a § 103 obviousness rejection, which must be based upon prior art, as required by the statute.

There simply is no teaching or suggestion in Fitch that the angled portions of the brackets 21, 22 should extend outwardly beyond the perimeter edge of the bed, as required by claim 1. Thus, even if Fitch is combined with Roth or Kruse, the modified structure does not meet the limitations of claim 1.

In a proper obviousness determination, the prior art must provide a teaching or suggestion to one of ordinary skill in the art to make the changes that would produce the claimed device. In re Chu, 66 F.3d 292, 298 (Fed. Cir. 1995). Even though a prior art device may be modified, the modification is not obvious unless the prior art fairly suggested the desirability of the modification. Id.; In re Fitch, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992).

Since Roth, Kruse and Fitch fail to teach or suggest the limitation of claim 1 that the guide plates extend outwardly from the perimeter edge of the bed, claim 1 distinguishes over the references so as to be in proper form for allowance.

Therefore, the § 103 rejections based upon Roth in view of Fitch and Kruse in view of Fitch should be reversed.

B. Claim 10 Is Not Rendered Obvious Over Ehlers in View of Titcombe.

Independent claim 10 was rejected under 35 U.S.C. § 103(a), as being unpatentable over Ehlers in view of Titcombe.

Claim 10 requires lock bars pivotally connected to the bed for movement between unlocked and locked positions, with the unlocked position being "spaced outwardly from the perimeter edge of the bed" and the locked position being "spaced inwardly from the perimeter edge of the bed." The combination of Ehlers and Titcombe do not meet these limitations of claim 10.

More particularly, the Examiner admits that Ehlers does not show lock bars which are pivotally mounted to the bed, and relies on Titcombe as showing pivotally mounted bars. The Examiner asserts that the Titcombe bars would be "a more convenient means of securing the boxes on the vehicle." However, "mere convenience" is not a basis for an obviousness rejection. There must be a teaching or suggestion in the prior art for combining the references. While the Titcombe lock bar may be actuated in one step rather than the two steps of the Ehlers lock bar, as asserted by the Examiner, there is a preliminary question as to whether a person skilled in the art would substitute the Titcombe lock bar for the Ehlers lock bar. The Titcombe lock bar is a much more complex structure than the Ehlers lock bar, and includes many more component pieces which must be manufactured and assembled. Presumably, the additional pieces and assembly time required for the Titcombe lock bar would be greater than the material and labor costs for manufacturing the Ehlers lock bar.

The Examiner further asserts that the Titcombe lock bars do not extend beyond the bed perimeter, as required by claim 10, "simply because the load does not extend to the bed perimeter." However, the Titcombe lock bar must be mounted via the pin 30 to the bed frame, and necessarily extends inwardly from the bed perimeter. The Titcombe lock bar

cannot be moved on the bed to a position wherein the locking member 24 would be outside the perimeter edge of the bed, in accordance with claim 1. In Figure 6 of Titcombe, if the locking member 24 was moved outwardly beyond the perimeter edge of the bed, there would be no structure to which the mounting pin 30 could be connected. Thus, it is impossible to position the lock member 24 of Titcombe outside the bed perimeter, as suggested by the Examiner.

The Examiner further asserts that the Titcombe and Ehlers lock bars are "obvious design equivalents." There is no basis in either § 103 or the case law to support an obviousness rejection based upon "design equivalents." Rather, as the Federal Circuit has explained, there must be a clear and particular objective teaching or suggestion in the prior art for combining the references. In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999); In re Fritch, 972 F.2d 1260, 1265 (Fed. Cir. 1992). Since there is no clear and particular objective teaching, suggestion or motivation for replacing the Ehlers lock bar with the Titcombe pivotal lock mechanism, the obviousness rejection of claim 10 is improper. Furthermore, even if Titcombe is combined with Ehlers, the resulting modified lock mechanism does not extend outwardly beyond the perimeter edge in the unlocked position, as required by claim 10. Therefore, claim 10 distinguishes over the cited references so as to be allowable.

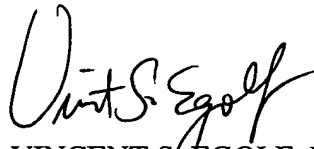
Therefore, the § 103 rejection based upon Ehlers in view of Titcombe should be reversed.

X. CONCLUSION

For the above-stated reasons, it is submitted that the claims are in a condition for allowability. The decision of the Examiner, therefore, should be reversed and the case allowed.

Enclosed herein please find the appeal brief in triplicate and required fee of \$165. If this amount is not correct, please consider this a request to debit or credit Deposit Account No. 26-0084 accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent S. Egolf". The signature is fluid and cursive, with the first name "Vincent" written in a larger, more prominent script than the last name "Egolf".

VINCENT S. EGOLF, Reg. No. 51,131
McKEE, VOORHEES & SEASE
Attorneys of Record

801 Grand - Suite 3200
Des Moines, Iowa 50309-2721
515-288-3667 - pw -

APPENDIX

Claim 1 (Previously presented): An improved trailer for transporting a bulk seed box, the box having first and second sidewalls, a bottom, a top, and a flange extending along the sidewalls adjacent the bottom of the box, the trailer comprising:

a wheeled bed for supporting a bulk seed box, the bed having a perimeter edge;

a hopper extending below the bed for receiving seed from the bulk seed box;

a conveyor operatively connected to the hopper for unloading seed from the hopper; and

the bed having guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed.

Claim 2 (Original): The improved trailer of claim 1 wherein the bed has four corners and the guide plates are located at the corners of the bed.

Claim 3 (Original): The improved trailer of claim 1 further comprising lock bars on the bed to overlappingly engage the flange of the seed box to secure the seed box to the bed.

Claim 4 (Original): The improved trailer of claim 3 wherein each lock bar is pivotally connected to the bed for movement between unlocked and locked positions.

Claim 5 (Original): The improved trailer of claim 4 further comprising pins on the bed adapted to selectively engage a portion of the lock bars to maintain the lock bars in the locked positions.

Claim 6 (Original): The improved trailer of claim 3 wherein the bed has a front end, a back end, and opposite sides, and the lock bars extend between opposite sides adjacent the front and back ends.

Claim 7 (Original): The improved trailer of claim 3 wherein the lock bars are pivotally mounted on the guide plates.

Claim 8 (Original): The improved trailer of claim 1 wherein the conveyor extends laterally away from the first sidewall, and the hopper includes a gate moveable between a closed position for retaining seed in the hopper and an open position for discharging seed from the hopper, and having a control arm connected to the gate and extending toward the first sidewall adjacent the conveyor.

Claim 9 (Original): The improved trailer of claim 1 wherein the conveyor is an auger including a first inner section and a second outer section pivotally attached to the first section for movement between transport and discharge positions, and including a gas cylinder to facilitate movement of the second section between the transport and discharge positions.

Claim 10 (Previously presented): An improved trailer for transporting a bulk seed box, the box having first and second sidewalls, a bottom, a top, and a flange extending along the sidewalls adjacent the bottom of the box, the trailer comprising:

a wheeled bed for supporting a bulk seed box, the bed having a perimeter edge;

a hopper extending below the bed for receiving seed from the bulk seed box;

a conveyor operatively connected to the hopper for unloading seed from the hopper;

lock bars on the bed to overlappingly engage the flange on the seed box to secure the seed box to the bed; and

each lock bar being pivotally connected to the bed for movement between an unlocked

position spaced outwardly from the perimeter edge of the bed and a locked position

spaced inwardly from the perimeter edge of the bed.

Claim 11 (Cancelled)

Claim 12 (Previously presented): The improved trailer of claim 10 further comprising pins on the bed adapted to selectively engage a portion of the lock bars to maintain the lock bars in the locked positions.

Claim 13 (Original): The improved trailer of claim 10 wherein the bed has a front end, a back end, and opposite sides, and the lock bars extend between opposite sides adjacent the front and back ends.

Claim 14 (Original): The improved trailer of claim 10 further comprising guide plates extending upwardly and outwardly from the bed to facilitate centering of the box on the bed.

Claim 15 (Previously presented): The improved trailer of claim 14 wherein the lock bars are pivotally mounted on the guide plates.

Claim 16 (Cancelled)

Claim 17 (Previously presented): The improved trailer of claim 15 wherein the bed has four corners and the guide plates are located at the corners of the bed.

Claim 18 (Original): The improved trailer of claim 10 wherein the conveyor extends laterally away from the first sidewall, and the hopper includes a gate moveable between a closed position for retaining seed in the hopper and an open position for discharging seed from the hopper, and having a control arm connected to the gate and extending toward the first sidewall adjacent the conveyor.

Claim 19 (Original): The improved trailer of claim 10 wherein the conveyor is an auger including a first inner section and a second outer section pivotally attached to the first section for movement between transport and discharge positions, and including a gas cylinder to facilitate movement of the second section between the transport and discharge positions.

Claims 20-26 (Cancelled)

Claim 27 (Previously presented): The improved trailer of claim 1 wherein each guide plate extends outwardly at an obtuse angle from the bed.

Claim 28 (Previously presented): The improved trailer of claim 1 wherein the guide plates define an enlarged box entrance sloping downwardly and inwardly toward the bed so that the box will automatically center on the bed when loaded onto the bed.